

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JERMEL JONES,

Plaintiff,

v.

Case No. 17-C-1523

RYAN MCCLAIN,

Defendant.

ORDER

Plaintiff Jermel Jones, an inmate currently serving a state prison sentence at Waupun Correctional Institution and representing himself, filed this action under 42 U.S.C. § 1983, alleging violations of his civil rights. This matter comes before the court on three motions, two by Plaintiff and one by Defendant.

Defendant moves for an extension of time to respond to Plaintiff's motion for summary judgment. ECF No. 58. Plaintiff filed his motion for summary judgment on April 18, 2018, and Defendant's response is therefore due on May 18, 2018. Civil L.R. 56(b)(2) (E.D. Wis.). Defendant seeks an extension of time until June 5, 2018, to file his response. He explains that the extension would allow him to combine his response with his own motion for summary judgment, which is due on June 5, 2018. ECF No. 58 ¶ 3. He also notes that the extra time will allow him to use materials from Plaintiff's deposition, scheduled for May 3, 2018, in responding to Plaintiff's motion. *Id.* A short extension of time allowing a combined brief from Defendant to at once respond to Plaintiff's motion and move for summary judgment seems likely to encourage efficient resolution of this case. Defendant's motion will therefore be granted.

Also before the court is Plaintiff's expedited motion under Civil Local Rule 7(h) to strike Defendant's affirmative defenses under Federal Rule of Civil Procedure 12(f). ECF No. 57. Although Rule 12(f) permits a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter," subsection (2) explains that the court may do so "on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading." Fed. R. Civ. P. 12(f)(2). Defendant filed his answer to Plaintiff's complaint on February 2, 2018 (ECF No. 25), but Plaintiff did not file this motion to strike until April 24, 2018. Because Plaintiff's motion is untimely, it must be denied. Nevertheless, Defendant has stated in response to Plaintiff's motion that he does not intend to pursue the exhaustion or sovereign immunity defenses, so Plaintiff need not concern himself with those defenses. ECF No. 65. Citing the Seventh Circuit's unpublished opinion in *Atkins v. Pickard*, 298 Fed. App'x 512 (7th Cir. 2008), Defendant contends that because the defense of good faith immunity turns on facts yet to be developed, it would be premature to strike the defense at this time. That defense will remain in the case.

Finally, Plaintiff has filed a motion seeking leave to file an amended summary judgment motion. ECF No. 60. Consistent with Civil Local Rule 7(i), Plaintiff has filed with his motion the proposed amended motion for summary judgment, as well as copies of his entire brief in support, his declaration, and his statements of proposed facts. ECF No. 60 at 2; *see also* ECF Nos. 61–64. Unfortunately, Jones fails to explain how his amended motion differs from the one he previously filed. Nevertheless, because the court in this order grants Defendant additional time to respond to Jones' motion, the risk of prejudice to Defendant by allowing Jones to amend his motion appears to be low. Accordingly, Jones' motion to amend will be granted. Given Defendant's approaching

response deadline, however, any additional motions by Jones to amend his summary judgment motion will be strongly disfavored.

IT IS THEREFORE ORDERED that Defendant's motion for an extension of time (ECF No. 58) is **GRANTED**. Defendant's deadline to respond to Plaintiff's motion for summary judgment is extended to June 5, 2018.

IT IS FURTHER ORDERED that Plaintiff's motion to strike (ECF No. 57) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's motion to amend his motion for summary judgment (ECF No. 60) is **GRANTED**. The Clerk is directed to file Jones' amended motion for summary judgment on the docket. The Clerk is further directed to terminate Jones' original motion for summary judgment (ECF No. 50).

Dated this 2nd day of May, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court